

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GREGORY S.,
Plaintiff,

v.

ANDREW SAUL,
Defendant.

Case No. 19-cv-07543-JSC

**ORDER RE: PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES**

Re: Dkt. No. 24

In this Social Security case, Plaintiff seeks attorney's fees under the Equal Access to Justice Act ("EAJA") following this Court's remand of his disability insurance benefits case. (Dkt. No. 24.) Plaintiff requests the Court award his reasonable attorney's fees in the amount of \$12,037.42.¹ The Commissioner opposes. Having carefully considered the papers submitted and the record in this case, the Court determines that oral argument is unnecessary, *see* N.D. Cal. Civ. L.R. 7-1(b), and GRANTS Plaintiff's motion.

BACKGROUND

This case stems from Plaintiff's appeal of the Social Security Administration's ("SSA") denial of his application for disability benefits for a combination of physical and mental impairments, including: cervical radiculopathy with chronic neck and shoulder pain, lumbar facet arthropathy with chronic lumbar pain and radiculopathy, depression, anxiety, and complications arising from an electrocution. On January 29, 2021, the Court granted Plaintiff's motion for summary judgment, denied Defendant's cross-motion for summary judgment, and remanded for further administrative proceedings. (Dkt. No. 22.) Plaintiff then filed the underlying motion for

¹ All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 3 & 8.)

EAJA fees in the amount of \$11,102.41. (Dkt. No. 24-1.) Plaintiff requested an additional \$935.01 for the time spent drafting the reply. (Dkt. No. 26 at 8.)

DISCUSSION

Under the EAJA, a court shall award a prevailing party its fees and expenses in an action against the United States unless “the position of the United States was substantially justified or special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). If the government’s position was not substantially justified, then the plaintiff may be eligible for an award of fees under the EAJA; however, eligibility is not an automatic award. *Atkins v. Apfel*, 154 F.3d 986, 989 (9th Cir. 1998). Rather, the plaintiff must prove that the fees sought are reasonable. *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001) (“The burden is on the plaintiff to produce evidence that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.”) (internal quotation marks omitted).

The parties here do not dispute that Plaintiff was the prevailing party given the Court’s reversal and remand to the ALJ. However, the Commissioner insists that the government’s position in this action was substantially justified and the amount of fees sought is unreasonable. The Court disagrees on both accounts.

A. Substantial Justification

The Supreme Court has defined “substantially justified” as “justified in substance or in the main—that is, justified to a degree that could satisfy a reasonable person,” or having a “reasonable basis both in law and fact.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). “The language of the EAJA creates a presumption in favor of awarding attorneys’ fees, and therefore the burden of establishing substantial justification is placed with the government.” *Campos v. Colvin*, No. 13-CV-03327, 2015 WL 2266692, at *1 (N.D. Cal. May 14, 2015); *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001) (the government bears the burden of showing that its position was substantially justified under EAJA).

Here, the Court granted Plaintiff’s motion for summary judgment because (1) the ALJ failed to provide specific, clear and convincing reasons for rejecting Plaintiff’s subjective pain

1 testimony; (2) the ALJ failed to provide germane reasons for rejecting the third-party statements
 2 from three individuals; and (3) the ALJ erred with respect to the weighing of the medical opinion
 3 evidence from four physicians. (Dkt. No. 22.) The Court remanded the action to the ALJ so that
 4 he could reevaluate the medical evidence including Dr. DuMouchel's chiropractic opinions, and
 5 determine what possible reasons, if any, explain Plaintiff's absence of treatment during the
 6 relevant adjudicatory period. (*Id.* at 18.)

7 The Commissioner does not directly address the Court's findings and instead generally
 8 argues that there was "some basis in the record" for its opinion and therefore its position was
 9 substantially justified citing *Hardisty v. Astrue*, 592 F.3d 1072, 1075 (9th Cir. 2010). (Dkt. No. 25
 10 at 3-4.) *Hardisty*, however, is inapposite. The district court there found that the ALJ made
 11 specific, fact-based findings, supported by the record, which were nonetheless insufficient such
 12 that remand was warranted, but that the Commissioner was nevertheless justified in defending.
 13 Here, in contrast, the Court found multiple errors with respect to the ALJ's consideration of the
 14 medical evidence and Plaintiff's subjective pain testimony. This case is more akin to *Meier v.*
 15 *Colvin*, 727 F.3d 867 (9th Cir. 2013), where the Ninth Circuit held that the ALJ's failure to offer
 16 specific and legitimate reasons, supported by substantial evidence for rejecting a physician's
 17 opinion and failure to offer clear and convincing reasons, supported by substantial evidence, for
 18 discounting the plaintiff's subjective pain testimony warranted a finding that the "government's
 19 underlying action was not substantially justified." *Id.* at 872; *see also Sampson v. Chater*, 103 F.3d
 20 918, 922 (9th Cir. 1996) ("It is difficult to imagine any circumstance in which the government's
 21 decision to defend its actions in court would be substantially justified, but the underlying
 22 administrative decision would not.").

23 Accordingly, the Court finds that the Commissioner has failed to meet his burden to show
 24 that the government was substantially justified in defending the ALJ's determination here.

25 **B. Reasonableness of Fee Requested**

26 In establishing the reasonableness of fees and expenses under EAJA, it is Plaintiff's burden
 27 to document "the appropriate hours expended in the litigation by submitting evidence in support of
 28 those hours worked." *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992). The starting

point for determining whether a fee is reasonable is “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The applicant must exercise “billing judgment,” i.e., the fees must be for services for which a private client would pay. *Id.* at 434 (“Hours that are not properly billed to one’s client also are not properly billed to one’s adversary pursuant to statutory authority.”). Courts should generally “defer to the winning lawyer’s professional judgment as to how much time he was required to spend on the case.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). An applicant may be awarded fees for hours spent litigating an EAJA fee award. *INS v. Jean*, 496 U.S. 154, 162 (1990).

Here, Plaintiff submits a declaration from his attorney, Katherine Siegfried, attesting that Ms. Siegfried spent 53.6 hours litigating this action and breaking down the time sought into separate billing entries. (Dkt. No. 24-2.) Plaintiff seeks the statutory maximum hourly rate for social security attorneys in the Ninth Circuit Court of Appeals: \$205.25 for work done in 2019 and \$207.78 for work done in 2020 and 2021. (Dkt. No. 24-1 at 5-6 (citing table set forth at: http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last viewed on 4/06/2021); 28 U.S.C. § 2412(d)(2)(A); *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005) and Ninth Circuit Rule 39-1.6.)) The Commissioner does not challenge counsel’s hourly rate which the Court finds reasonable. Rather, the Commissioner maintains that because Ms. Siegfried is an experienced attorney it was unreasonable for her to spend 20.2 hours on the opening brief and 12.1 hours on the reply. The Commissioner cites numerous out-of-circuit cases that are 20-30 years old finding that 20-30 hours is the reasonable amount of time to spend preparing a social security appeal. (Dkt. No. 25 at 5.)

The Ninth Circuit has held that it is “an abuse of discretion to apply a de facto policy limiting social security claimants to twenty to forty hours of attorney time in ‘routine’ cases.” *Costa v. Comm. of Soc. Sec. Admin.*, 690 F.3d 1132, 1137 (9th Cir. 2012) (holding that courts should consider factors such as the complexity of legal issues, the procedural history, the size of the record, and when counsel was retained for each case). Social security cases involve a myriad of complex legal issues as well as oftentimes a voluminous administrative record. This case was

1 no exception. The administrative record totaled nearly 700 pages and Plaintiff's brief raised three
2 substantive legal issues each of which had numerous subpoints—nearly all of which warranted
3 reversal of the ALJ's decision. Under these circumstances, the Court finds that the 50.4 hours
4 spent by Plaintiff's counsel preparing the briefing which led to this reversal and the 7.7 hours
5 spent preparing the motion for attorney's fees and reply brief are reasonable. *See Jean*, 496 U.S.
6 at 161 (holding that under the EAJA, a prevailing party is entitled to fees incurred in litigation
7 with the government in moving for an EAJA fee award).

8 Accordingly, Plaintiff is entitled to \$12,037.42 in attorney's fees.

9 **CONCLUSION**

10 For the reasons stated above, Plaintiff's motion for an award of attorney's fees pursuant to
11 the EAJA is GRANTED. Plaintiff is awarded \$12,037.42 in attorney's fees. The award should be
12 paid directly to Plaintiff's counsel, The Law Offices of Katherine Siegfried.

13 This Order disposes of Docket No. 24.

14 **IT IS SO ORDERED.**

15 Dated: April 28, 2021

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18 JACQUELINE SCOTT CORLEY
United States Magistrate Judge